

## EXHIBIT 3-B

### RULES OF CONDUCT FOR PUBLIC OFFICIALS AND EMPLOYEES AND CONFLICT OF INTEREST STATUTES

#### **2-2-104. Rules of conduct for all public officers, legislators, and employees.**

(1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty. A public officer, legislator, or employee may not:

(a) disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(i) which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties; or

(ii) which he knows or which a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken.

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of such services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

**2-2-201. Public officers, employees, and former employees not to have interest in contracts.** (1) Members of the legislature; state, county, city, town, or township officers; or any deputies or employees of an enumerated governmental entity may not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees if they are directly involved with the contract. A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which the former employee was directly involved during employment.

(2) In this section, the term:

(a) "be interested in" does not include holding a minority interest in a corporation;

(b) "contract" does not include:

(i) contracts awarded based on competitive procurement procedures conducted after the date of employment termination;

(ii) merchandise sold to the highest bidder at public auctions;

(iii) investments or deposits in financial institutions that are in the business of loaning or receiving money;

(iv) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It is presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a

contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(c) "directly involved" means the person directly monitors a contract, extends or amends a contract, audits a contractor, is responsible for conducting the procurement or for evaluating proposals or vendor responsibility, or renders legal advice concerning the contract;

(d) "former employee" does not include a person whose employment with the state was involuntarily terminated because of a reduction in force or other involuntary termination not involving violation of the provisions of this chapter.

**7-3-4367. Control of conflict of interest.** (1) Commissioners and other officers and employees shall not be interested in the profits or emoluments of any contract, job, work, or service for the municipality and shall not hold any partisan political office or employment. Any commissioner who shall cease to possess any of the qualifications herein required shall forthwith forfeit his office, and any such contract in which any member is or may be interested may be declared void by the commission.

(2) No commissioner or other officer or employee of said city or town shall accept any frank, free ticket, pass, or service, directly or indirectly, from any person, firm, or corporation upon terms more favorable than are granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor and shall also be sufficient cause for the summary removal or discharge of the offender. Such provisions for free service shall not apply to policemen or firefighters in uniform or wearing their official badges where the same is provided by ordinance or to any commissioner or to the city manager or to the city attorney upon official business, or to any other employee or official of said city on official business who exhibits written authority signed by the city manager.

**7-5-2106. Control of conflict of interest.** No member of the board must be directly or indirectly interested:

- (1) in any property purchased for the use of the county;
- (2) in any purchase or sale of property belonging to the county; or
- (3) in any contract made by the board or other person on behalf of the county for the erection of public buildings, the opening or improvement of roads, the building of bridges, or the purchasing of supplies or for any other purpose.

**7-5-4109. Control of conflict of interest.** (1) The mayor, any member of the council, any city or town officer, or any relative or employee of an enumerated officer may not be directly or indirectly interested in the profits of any contract entered into by the council while the officer is or was in office.

(2) The governing body of a city or town may waive the application of the prohibition contained in subsection (1) for a city or town officer or employee, or to the relative of an officer or employee, if in an official capacity the officer or employee does not influence the decisionmaking process or supervise a function regarding the contract in question. A governing body may grant a waiver under this subsection only after publicly disclosing the

nature of the conflict at an advertised public hearing held for that purpose. In determining whether to grant a waiver, the governing body shall consider the following factors, where applicable:

- (a) whether the waiver would provide to a program or project a significant benefit or an essential skill or expertise that would otherwise not be available;
- (b) whether an opportunity was provided for open competitive bidding or negotiation;
- (c) whether the person affected is a member of a clearly identified group of persons that is the intended beneficiary of the program or project involved in the contract; and
- (d) whether the hardship imposed on the affected person or the governmental entity by prohibiting the conflict will outweigh the public interest served by avoiding the conflict.

**SAMPLE NOTICE FOR A PUBLIC HEARING  
TO CONSIDER WAIVER OF THE CONFLICT OF INTEREST  
A PROVISION FOR LOCAL GOVERNMENT OFFICERS AND EMPLOYEES**

NOTE: The 1993 Legislature amended the two statutes (section 2-2-201 and 7-5-4109, MCA), which prohibit conflicts of interests by public officials and employees regarding public contracts. Under the amended law, the governing body of a city, town, or county can waive the application of the conflict of interest prohibition for a present or former city, town, or county officer or employee who in an official capacity does not influence the decision-making process or supervise a function regarding the contract in question. A governing body can grant a waiver only after publicly disclosing the nature of the conflict at an advertised public hearing held for that purpose. In determining whether to grant a waiver, the governing body must consider the following factors, where applicable:

- (a) whether the waiver would provide to a program or project a significant benefit or an essential skill or expertise that would otherwise not be available;
- (b) whether an opportunity was provided for open competitive bidding or negotiation;
- (c) whether the person affected is a member of a clearly identified group of persons that is the intended beneficiary of the program or project involved in the contract; and
- (d) whether the hardship imposed on the affected person or the governmental entity by prohibiting the conflict with outweigh the public interest served by avoiding the conflict.

The following model format can be adopted to prepare the required advertisement for the public hearing mandated by the law.

## **NOTICE OF PUBLIC HEARING**

The \_\_\_\_\_ Town (City) Council (or \_\_\_\_\_ County Commissioners) will hold a public hearing on \_\_\_\_\_ (day), \_\_\_\_\_ (month), 20\_\_, in \_\_\_\_\_ (building or location) at \_\_\_\_\_ (time).

The purpose of the hearing is to review a potential conflict of interest situation involving the Town's (City's or County's) \_\_\_\_\_ (type of project) project which is being funded, in part, through the Treasure State Endowment Program (TSEP) administered by the Montana Department of Commerce. At the hearing, the Council (Board of Commissioners) will explain state law governing conflict of interest by public officials and employees, consider its application in this case, and decide whether or not granting a waiver is justified. The public is invited to attend. Persons seeking more information about this matter should contact:

\_\_\_\_\_ (name), \_\_\_\_\_ (title),  
\_\_\_\_\_ (telephone) during regular office hours.